SUPREME COURT, U. S.

JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 192
Formerly No. 1423

UNITED STATES OF AMERICA,
PETITIONER,

v.

SANDRA & DENNIS FISHING CORPORATION, ET AL.,
RESPONDENTS.

BRIEF FOR THE SANDRA & DENNIS FISHING CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI IN UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT CASE NO. 6637. (P & I INSURER)

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This Brief is filed on behalf of the P & I Insurers of Sandra & Dennis Fishing Corporation in opposition to the petition for certiorari in the U. S. Court of Appeals for the First Circuit, Case No. 6637.

Statement of Proceedings Below

Attorneys for the P & I Insurers of Sandra & Dennis Fishing Corporation timely filed a petition for exoneration from or limitation of liability (United States District Court, District of Massachusetts 62-27-C) in which proceeding the United States filed no claim until after the entry of several decrees prohibiting the filing of such claims. (No. 6637 RA 99a, RA 19a-20a, 2a.) From the denial of its various motions, it appealed.

The appeal, No. 6637, was briefed and argued on questions of (1) the standing of the United States to appeal, (2) the timeliness of the appeal, and (3) whether the District Court had abused its discretion in refusing to permit the late filing. These questions were never decided by the Court of Appeals because of intervening developments in the United States limitation petition (U.S. District Court, District of Massachusetts 63-27-C; Court of Appeals No. 6772). In that case, the P & I Insurers withdrew their claim for indemnity, leaving in the case only the claim of hull underwriters seeking reimbursement of the $25,000 paid on a loan receipt for the loss of the hull. (No. 6637 RA 92a-96a).

The District Court found the United States solely at fault, thus rendering temporarily moot any question of its right to file a late claim in 6637. When the Court of Appeals affirmed the finding of sole fault in 6772, it decided that the questions raised in 6637 were permanently moot, and dismissed the appeal.

The United States now seeks review of that dismissal.

Argument

1. The United States has advanced no reason to grant the petition for certiorari in case No. 6637. It does not

argue any conflict among the circuits or important question of federal law, or any other basis for review.

2. No case in conflict with the First Circuit decision of mootness has been found. The procedural posture of the case is so unique as to be academic. No basis for certiorari has been shown.

3. The questions involved in No. 6637 will remain moot until this Court: (a) grants certiorari, and (b) changes the outcome of the decision in case No. 6772. There is, consequently, no basis for review at this time of case No. 6637.

If, because of action of this Court in 6772, the issues in 6637 become no longer moot, this Court should await the benefit of consideration of such issues by the Court of Appeals before deciding if review is required.

Conclusion

Certiorari should be denied with respect to Court of Appeals, First Circuit, Case No. 6637.

Respectfully submitted,

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